



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 16 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL: No. 7011 1150 0000 2641 7246
RETURN RECEIPT REQUESTED

Mr. William DeMarse
Bill DeMarse Professional Painting
16270 Robbins Road
Grand Haven, Michigan 49417

Consent Agreement and Final Order In the Matter of

William DeMarse d/b/a Bill DeMarse Professional Painting Docket No. TSCA-05-2015-0011

Mr. DeMarse:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on September 16, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,545 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxics Compliance Section

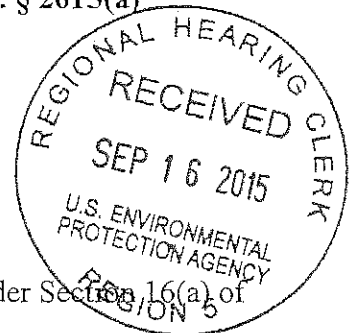
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. TSCA-05-2015-0011
)	
William DeMarse d/b/a/)	
Bill DeMarse Professional Painting)	Proceeding to Assess a Civil Penalty
Grand Haven, Michigan)	Under Section 16(a) of the Toxic Substances
)	Control Act, 15 U.S.C. § 2615(a)
Respondent)	
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Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is William DeMarse d/b/a/ Bill DeMarse Professional Painting, 16270 Robbins Road, Grand Haven, Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et. seq.*, by adding Title IV – Lead Exposure Reduction. Section 406(b) of TSCA, 15 U.S.C. § 2686, required the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

11. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV (TSCA §§ 2681-2692).

12. On June 1, 1998, EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. §§ 2686 and 2687, which was subsequently amended and recodified on April 22, 2008, at 40 C.F.R. Part 745, Subpart E, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule).

13. The PRE Rule and the information distribution requirements of the RRP Rule, at 40 C.F.R. § 745.84, implement the provisions of 15 U.S.C. §§ 2686 and 2687, which impose certain requirements prior to renovation of target housing. Each person who performs for compensation a renovation of target housing must provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation and must comply with the PRE Rule by June 1, 1999, and with the amended information distribution requirements of the RRP Rule by April 22, 2008.

14. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Subpart E applicable to renovations of target housing performed for compensation.

15. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

16. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The

term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

17. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

18. 40 C.F.R. § 745.103 defines *residential dwelling* to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

19. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

20. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R.

§ 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

21. 40 C.F.R. § 745.81(a)(3) requires that on or after April 22, 2010, all renovations must be directed by renovators certified in accordance with 40 C.F.R. § 745.90(a) and performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

22. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires that before conducting renovation activities in target housing, the renovation firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

23. 40 C.F.R. § 745.85(a)(5) requires that after the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains. 40 C.F.R. § 745.85(a)(5)(i)(A) requires the firm must collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

24. Under 15 U.S.C. § 2689, failing to comply with Section 406(b) of TSCA violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

25. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and

its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation for violations that occurred from March 16, 2004 through January 12, 2009, and to \$37,500 for violations that occurred after January 12, 2009.

General Allegations

26. During 2013, Respondent was an individual.
27. Therefore, Respondent was a *person* as defined by 40 C.F.R. § 745.83.
28. During 2013, Respondent was an individual doing business as Bill DeMarse Professional Painting in Grand Haven, Michigan.
29. Therefore, Respondent was a *firm* as defined by 40 C.F.R. § 745.83.
30. Respondent performed, or directed workers who performed, modifications of existing structures that resulted in disturbances of painted surfaces as detailed below.

Target Housing

Housing Address	Housing Year	Contracted Work	Contract Performance Dates
209 South 5 th Street Grand Haven, MI.	1900	"Power washed house and porch" "Scraped" and "Scraped . . . porch beam railings and floor" "Raked up paint chips"	September 30, 2013; October 11, 12, 14, 18, 2013

31. The housing addressed, above, was residential housing.
32. The residential housing was built prior to 1978.
33. Therefore, the residential housing was *target housing* as defined at 40 C.F.R. § 745.103.
34. In September of 2013, Respondent contracted with individuals to perform renovation activities, as described in paragraph 30 above, at 209 South 5th Street, Grand Haven, Michigan.

35. On September 30, October 11, 12, 14, and 18, 2013, Respondent power washed, sanded and scraped painted wood at 209 South 5th Street, Grand Haven, Michigan, which disturbed and removed painted surfaces and components and generated paint dust.

36. Therefore, the Contracted Work was a *renovation* as defined at 40 C.F.R. § 745.103.

Counts 1 through 4

37. Count 1: On or about September 30, 2013, Respondent performed, offered, or claimed to perform a renovation, but failed to obtain from EPA the certification required by 40 C.F.R. § 745.89, in violation of 40 C.F.R. § 745.81(a)(2)(ii).

38. Count 2: On or about September 30, 2013, Respondent began a renovation, but failed to direct it with renovators certified in accordance with 40 C.F.R. § 745.90(a), and perform it with certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2), in violation of 40 C.F.R. § 745.81(a)(3).

39. Count 3: On or about September 30, 2013, Respondent began a renovation, but failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever was greater, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

40. Count 4: On or about September 30, 2013, Respondent completed its renovation, but failed to clean the work area until no dust, debris, or residue remained, in violation of 40 C.F.R. § 745.85(a)(5). Respondent also failed to collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag, in violation of 40 C.F.R. § 745.85(a)(5)(i)(A).

41. Respondent's failures constituted 4 violations of 40 C.F.R. Part 745 and 15 U.S.C. § 2689.

Civil Penalty

42. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$28,545. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, dated August 19, 2010.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,545 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must state "In the Matter of William DeMarse d/b/a/ Bill DeMarse Professional Painting" and the Docket Number of this CAFO.

44. A transmittal letter stating Respondent's Name, Address, Case Title, Case Docket Number and the Billing Document Number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not pay timely the civil penalty EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

50. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

51. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

52. Respondent certifies that it is complying with TSCA, the PRE Rule, and RRP Rule.

53. The terms of this CAFO bind Respondent, and its successors and assigns.

54. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney's fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

In the Matter of: William DeMarse d/b/a Bill DeMarse Professional Painting.
Docket No.

William DeMarse d/b/a/ Bill DeMarse Professional Painting, Respondent

8-25-15
Date

William DeMarse
William DeMarse
Owner and Operator

United States Environmental Protection Agency, Complainant

9/4/2015
Date

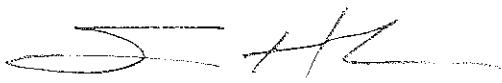
Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: William DeMarse d/b/a Bill DeMarse Professional Painting.
Docket No. TSCA-05-2015-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

14 September 2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

William DeMarse d/b/a
Bill DeMarse Professional Painting
(Grand Haven, Michigan)
Docket # (TSCA-05-2015-0011)

In the matter of:

Docket Number: TSCA-05-2015-0011

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on September 16, 2015, in the following manner to the addressees:

Copy by Certified Mail

Return-receipt:

Mr. William DeMarse
Bill DeMarse Professional Painting
16270 Robbins Road
Grand Haven, Michigan 49417

Copy by E-mail to

Attorney for Complainant:

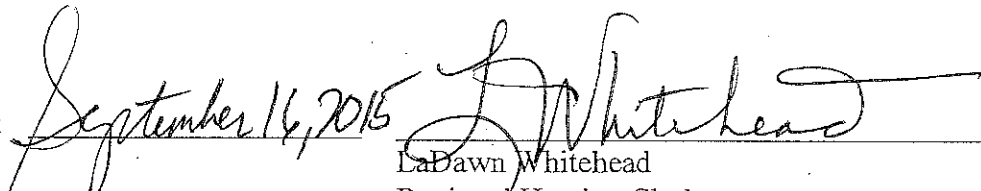
Jeffery M. Trevino
Trevino.jeffery@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

September 16, 2015 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2641 7246